IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

OP.No. 10129 of 2003(E)

PETITIONER:

1. P.N.PARAMAN, UDANCHERY HOUSE,
POLLATHAI P.O., VALAVANADU S.L.PURAM,
ALAPPUZHA DISTRICT.

ADDL. PETITIONERS IMPLEADED

2. PARVATHY BHARGAVI, W/O. LATE P.N. PARAMAN,
AGED 78, UDANCHERY HOUSE, POLLATHAI P.O.,
VALAVANADU, S.L. PURAM, ALAPPUZHA DT.

3. K.B. LALITHA, D/O. LATE P.N. PARAMAN, AGED 57,
UDAMSSERIYIL VEEDU, POLLATHAI P.O. -DO-

4. P. PURUSHOTHAMAN, S/O. LATE P.N. PARAMAN,
AGED 54, -DO- -DO-

5. P. SARADA, D/O. LATE P.N. PARAMAN, AGED 42,
VAISAKH, VELLANIKKARA P.O., TRICHUR DT.

6. P. LATHA, D/O. LATE P.N. PARAMAN, AGED 39
KARUVALLIL, MUHAMMA P.O., ALAPPUZHA DT.

7. P. SYAMALA, D/O. LATED P.N. PARAMAN, AGED 36,
RATTAM VEEDU, VARANAD P.O., CHERTHALA TALUK.

(ADDL. PETITIONERS IMPLEADED AS PER ORDER IN I.A. NO. 7360/05 DT. 22.08.2007)

BY ADV. SRI.K.K.SATHEESH

RESPONDENTS:

1. UNION OF INDIA REPRESENTED BY THE
SECRETARY, MINISTRY OF HOME AFFAIRS,
FREEDOM FIGHTERS' DIVISION, NEW DELHI-110 003.

2. STATE OF KERALA, REPRESENTED BY THE
SECRETARY, GENERAL ADMINISTRATION (FFP.A)
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY ADV. SRI.D.SOMASUNDARAM, ADDL.CGSC
SRI. V.T.K. MOHAN for R2.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 17529/2003 IN O.P. NO. 10129/2003

CLOSED

22.08.2007 SD/- T.R. RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: TRUE COPY OF THE RELEVANT PORTION OF THE SSS PENSION SCHEME, 1980.

EXT.P2: TRUE COPY OF THE PROCEEDINGS NO. 41460/94 OF THE DISTRICT COLLECTOR, ALAPPUZHA DATED 21.7.1994.

EXT.P3: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR GRANT OF SSS PENSION DATED 16.4.1998.

EXT.P4: TRUE COPY OF THE COMMUNICATION NO.H3-269/98/SR DATED -3-2000 ISSUED BY THE DISTRICT COLLECTOR ALAPPUZHA TO THE PETITIONER.

EXT.P5: TRUE COPY OF THE NARC ISSUED BY THE SUPDT. OF POLICE, ALAPPUZHA DATED 01.06.2000.

EXT.P6: TRUE COPY OF THE NARC ISSUED BY THE CHIEF JUDICIAL MAGISTRATE, ALEPPEY IN CASE NO. P.E.7/1122 ON THE FILE OF THE SPECIAL COURT, ALLEPPEY.

EXT.P7: TRUE COPY OF THE PKC ISSUED BY SRI. NARAYANAN RAMANKUTTY.

EXT.P8: TRUE COPY OF THE TRUE EXTRACT OF THE CONVICT REGISTER OF CENTRAL PRISON, TRIVANDRUM ISSUED BY THE SUPDT. OF THAT PRISON IN RESPECT OF SRI. NARAYANAN RAMANKUTTY.

EXT.P9: TRUE COPY OF THE COMMUNICATION NO. H3.28582/02/D.DIS. DATED 24.10.2002 ISSUED BY THE DISTRICT COLLECTOR, ALAPPUZHA TO THE PETITIONER.

EXT.P10: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 25.11.2002.

/True Copy/

P.A to Judge.

T.R. RAMACHANDRAN NAIR, J

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O.P. NO. 10129 OF 2003

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Dated this the 22nd day of August, 2007.

JUDGMENT

The deceased 1st petitioner was a freedom fighter who had actively participated in the Punnapra-Vayalar Struggle during the freedom struggle. On account of his active participation in the said struggle, arrest warrant was issued against him by the Special Magistrate Court, Alleppey in case No. P.E.7/1122 M.E. He had gone underground for a period of more than one year from November, 1946 to December, 1947 pursuant to the warrant of arrest issued against him.

2. The deceased 1st petitioner was granted Freedom Fighters' Pension (State Pension) as per Ext.P2 order dated 21.07.1994. Ext.P3 dated 16.04.1998 is the application for pension under the S.S.S. scheme.

3. By Ext.P4, the District Collector directed the petitioner to produce the documents like warrant of arrest or the copy of the register showing the persons who have gone underground and in the absence of the same, Non-availability of Records Certificate

from the Sub-Jail/Central Jail, office of the District Superintendent of Police, State Intelligence Bureau and Village Crime Book and an affidavit attested by the Judicial First Class Magistrate. In reply to the same, the petitioner produced Ext.P5 NARC from the Superintendent of Police, Alappuzha, Ext.P6 from the Chief Judicial Magistrate, Alappuzha, Ext.P7- Personal Knowledge Certificate issued by Sri. Narayanan Ramankutty and Ext.P8, the extract of the Convict Register relating to the certifier.

4. The District Collector by Ext.P9 informed the petitioner that the government has rejected the application as copies of official records or other acceptable certificates have not been produced by the petitioner. Again, the petitioner filed Ext.P10 before the State Government requesting to recommend the case of the deceased petitioner, relying upon the principles declared by the Hon'ble Supreme Court in **Mukund Lal Phandari v. Union of India (AIR 1993 SC 2127) and Gurdial Singh v. Union of India (2001 (8) SCC 8).**

5. Since no further action was taken, the original petition is filed seeking various reliefs. The petitioner expired on 03.02.2005 and the additional petitioners have been impleaded as per Order in I.A. No. 7360/2005.

6. The respondents have filed a counter affidavit wherein the stand taken is that certificate of Sri. Ittiyathi Vasudevan cannot be accepted as he is not an eligible certifier. With regard to the NARC from the Superintendent of Police and the Chief Judicial Magistrate Court, the stand taken is that there is nothing to conclusively show that the petitioner had any connection with the case. It is, therefore, contended that the petitioner has not produced any reliable Non-availability of Records Certificate. The counter affidavit shows that the District Collector on 25.01.2003 submitted a report not recommending the case in the absence of any acceptable documents.

7. The counter affidavit shows that no objections have been taken in respect of Exts. P7 and P8. The certificate issued by Sri. Narayanan Ramankutty and the extract of the Convict Register gives details of his imprisonment. The eligibility of the said

certifier have been accepted in other cases also. The question is whether the objection that the NARCs are not acceptable is correct. In the NARC issued by the Superintendent of Police - Ext.P5 it is clearly certified that no records are available, in respect of the certificate sought for and in the NARC issued from the Chief Judicial Magistrate Court also, it is recorded that the records of the year 1122 have already been destroyed. Therefore, it is a case where the competent authorities have certified that the records relating to the warrant of arrest sought for by the petitioner are not available. It is not explained in the counter affidavit as to what are the requirements of a valid N.A.R.C. At any rate, when the above certificates convey the idea that the records are not available, there is no justification in rejecting the same. The above is supported by the judgment of this Court in **Sadananda Swamy v. Union of India** (2004 (2) KLT 76)(SN) where the petitioner had filed an application pointing out the particular case number showing him as an accused and when the court has certified that the records relating to that order are not available, the rejection of the certificate was

held evidently wrong. It was observed that " in such a situation taking a lenient view one can only go by the consistent pleading of the petitioner that the case relates to the freedom movements." The very same situation arises here also.

8. Apart from that, this is a case where for the very same suffering in the freedom struggle, the deceased petitioner had been granted pension by the District Collector as per order dated 21.7.1999. It is evident that the same was granted to him satisfying that he is a genuine freedom fighter and that he had undergone the very same suffering. It is, therefore, a case where the action taken by the District Collector not to recommend the application for pension is clearly without any application of mind.

9. Therefore, Ext.P9 is quashed and there will be a further direction to the 2nd respondent to forward the Verification cum Recommendation Report to the 1st respondent within six weeks from the date of receipt of a copy of this judgment. The 1st respondent shall pass appropriate orders thereon within a further period of two months from the date of receipt of the records from

the State Government. Now, that the petitioner is no more, the application of the widow who is the additional petitioner here has to be considered in accordance with the scheme and the claim for arrears from the date of receipt of the application dated 16.04.1998 will also be considered by the Central Government.

The Original Petition is allowed accordingly.

T.R. RAMACHANDRAN NAIR, JUDGE.

rv

T.R. RAMACHANDRAN NAIR, J

O.P. NO. 10129 of 2003

22nd day of August, 2007

JUDGMENT